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In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

ELIZABETH JANE HALL

JAMES BURNETT MCKAY LAING, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SIXTH AND SECOND CIRCUITS

BRIEF FOR THE PETITIONERS IN NO. 74-75 AND FOR THE RESPONDENTS IN NO. 73-1808

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No. 74–75

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BRIEF FOR THE PETITIONERS IN NO. 74–75 AND FOR THE RESPONDENTS IN NO. 73–1808

OPINIONS BELOW

No. 74–75. The opinion and order of the district court (Pet. App. A 1a–6a) are not reported. The opin-

ion of the court of appeals (Pet. App. B 7a–10a) is reported at 493 F. 2d 1211.

No. 73–1808. The opinion of the district court (Pet. App. B 19–27) is reported at 364 F. Supp. 469. The opinion of the court of appeals (Pet. App. A 15–18) is at 496 F. 2d 853.

JURISDICTION

No. 74–75. The judgment of the court of appeals (Pet. App. C 11a–12a) was entered on March 12, 1974. By order dated May 31, 1974, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including August 9, 1974. The petition for a writ of certiorari was filed on August 5, 1974, and was granted on October 15, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

No. 73–1808. The judgment of the court of appeals was entered on May 2, 1974. The petition for a writ of certiorari was filed on May 31, 1974, and was granted on October 15, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Anti-Injunction Act (Section 7421(a) of the Internal Revenue Code of 1954) bars a suit in any court by any person to restrain the assessment or collection of any tax. The provision contains an exception for cases where the Commissioner is required to issue a notice of deficiency under Section 6212(a).

The question presented is whether the Commissioner may terminate a taxpayer's taxable year under Section 6851 of the Code and assess and collect the taxes due for the terminated period without issuing a notice of deficiency under Section 6212(a), so that a suit to enjoin the Commissioner's assessment and collection of taxes would be barred under the Anti-Injunction Act.

STATUTES INVOLVED

The pertinent provisions of Sections 6201, 6211, 6212, 6213, 6331, 6332, 6335, 6511, 6532, 6851, 6861, 6863, 7421, and 7422 of the Internal Revenue Code of 1954, are set forth in Appendix A, *infra*, pp. 53–66.

STATEMENT

These cases present the identical question whether the Anti-Injunction Act, 26 U.S.C. 7421(a), bars a suit to enjoin the assessment and collection of income taxes pursuant to the Commissioner's termination of a taxpayer's taxable year under Section 6851 of the Internal Revenue Code of 1954, where the Commissioner does not issue a notice of deficiency under Section 6212(a). In No. 74–75, the Sixth Circuit has held that the Anti-Injunction Act is not applicable; in No. 73–1808, the Second Circuit has upheld the government's position that the Act bars such a suit. Because of the common issue, the Court has scheduled the oral arguments in these cases in tandem. In order that the Court may consider the single legal issue involved in the factual context of both cases, we are filing this single brief for the government, as petitioner in No. 74–75, and as respondent in No. 73–1808.

No. 74–75. Respondent brought this action to enjoin the Commissioner's assessment and collection of taxes.

The suit was brought after the District Director of Internal Revenue for the District of Kentucky notified respondent by letter on February 1, 1973, that he found her to be involved in illicit drug activities tending to prejudice or render ineffectual the collection of income tax for the period January 1, 1973 through January 30, 1973. Pursuant to his authority under Section 6851 of the Internal Revenue Code of 1954, he declared her taxable year commencing January 1, 1973, to be terminated as of January 31, 1973, and the income tax for that period to be immediately due and payable. He further stated that the tax owed for the terminated period was $52,680.25, and would be assessed immediately (A. 11–12;[1] Pet. App. A 1a; Pet. App. B 8a).

Respondent was unable to pay the tax. Pursuant to its authority under Section 6331 of the Code, the Internal Revenue Service levied on all of her property, which included her automobile and her bank account. The bank paid the balance of the account over to the Internal Revenue Service, which received bids on respondent's automobile (Pet. App. A 1a; Pet. App. B 8a).

Respondent thereupon commenced this action in the United States District Court for the Western District of Kentucky seeking injunctive relief with respect to the assessment against her (Pet. App. A 1a). The district court granted a preliminary injunction requiring the immediate return of respondent's automobile upon her posting a bond sufficient to

[1] "A." references are to the record appendix.

cover its fair market value. The court further barred the Internal Revenue Service from "seizing or levying upon any of her property of whatever nature * * *" (Pet. App. A 5a–6a). In the district court's view, when the Internal Revenue Service terminates a taxpayer's taxable year under Section 6851 and assesses taxes for the terminated period, it must issue a notice of deficiency under Section 6212(a). Because the Internal Revenue Service did not issue such a notice of deficiency to respondent, the district court held that the bar of the Anti-Injunction Act, which prohibits suits "for the purpose of restraining the assessment or collection of any tax," was not applicable (Pet. App. A 1a–4a).

The court of appeals affirmed *per curiam* (Pet. App. B 7a–10a). Invoking its earlier decision in *Rambo* v. *United States*, 492 F. 2d 1060 (C.A. 6), petition for a writ of certiorari pending, No. 73-2005, the court of appeals concluded that "*Rambo* is decisive of all the legal questions involved in our case and we will follow it" (Pet. App. B 9a).

No. 73-1808. Petitioner James Burnett McKay Laing is a citizen of New Zealand. He entered the United States from Canada on a temporary visitor's visa on May 31, 1972. On June 24, 1972, he and two companions were refused entry into Canada by Canadian officials. As a result, they returned to the United States where they were stopped at the border by United States Customs officials in Derby, Vermont. Upon a search of the vehicle in which petitioner and his companions were travelling, the customs offi-

cers found concealed in the engine compartment a suitcase containing more than $300,000 in United States currency (Pet. App. B 20).

After notification by the customs officials, the District Director of Internal Revenue, in Burlington, Vermont, determined that petitioner and those accompanying him were in the process of putting their assets beyond the reach of the government by removing them from the United States, which would prejudice or render ineffectual the collection of income tax. Pursuant to the authority under Section 6851(a) of the Internal Revenue Code of 1954, the District Director declared the taxable years of petitioner and his two companions immediately terminated. Assessments were made against each individual of $310,000 [2] for the period January 1, 1972, through June 24, 1972.

After they refused to pay the tax, the money found hidden in the engine compartment of the automobile was levied upon and seized by the Internal Revenue Service. A portion of this sum was applied to the tax assessed against petitioner (Pet. App. B 20–21).

Petitioner thereupon commenced this suit in the United States District Court for the District of Vermont to enjoin the continued possession of the seized funds by the Internal Revenue Service. He urged that the bar of the Anti-Injunction Act was not applicable because the Internal Revenue Service had not issued a notice of deficiency to him prior to the seizure of the funds (Pet. App. B 19).

[2] The assessment against petitioner was subsequently abated to $195,985.55 (Pet. App. B 21).

Following *Irving* v. *Gray*, 479 F. 2d 20 (C.A. 2), the district court held that a notice of deficiency is not required when, as here, the Internal Revenue Service terminates a taxpayer's taxable year pursuant to Section 6851. It accordingly dismissed petitioner's suit for injunctive relief as prohibited by the Anti-Injunction Act [3] (Pet. App. B 19–27). The district court further determined that petitioner did not meet the narrow two-fold exception to the Anti-Injunction Act established by this Court in *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, and most recently reaffirmed in *Bob Jones University* v. *Simon*, No. 72–1470, decided May 15, 1974; and *Alexander* v. *"Americans United", Inc.*, No. 72–1371, decided May 15, 1974. It concluded that petitioner did not demonstrate that: (1) under no circumstances would the government ultimately prevail on the merits of its tax claim; and (2) he was without an adequate remedy at law.[4]

The court of appeals adhered to its decision in *Irving* and affirmed *per curiam* (Pet. App. A 15–18).

SUMMARY OF ARGUMENT

A

In enacting the Anti-Injunction Act, Congress has recognized that the prompt and efficient collection of the federal revenues is a paramount national concern.

[3] The district court also rested its decision upon the tax exception to the Declaratory Judgment Act (28 U.S.C. 2201) (Pet. App. B 22).

[4] In fact, petitioner has commenced a refund suit which is currently pending in the district court (D. Vt.—Civ. No. 73–137). The parties have filed a stipulation in that case that the trial be delayed until the decision by this Court in this case.

This statute prohibits the courts from granting injunctions against the assessment or collection of taxes. As this Court has observed, the Act reflects the desire of Congress to avoid the possibility that the courts could interfere with the orderly process of collecting the revenues upon which the government depends for its continuing existence.

The prefatory clause of the Anti-Injunction Act creates a qualified exception to the prohibition against injunctions. This statutory exception involves those cases which are subject to the jurisdiction of the Tax Court, unless the Commissioner believes that collection will be jeopardized by delay. Pursuant to Section 6213(a), if the Commissioner takes steps to assess or collect the deficiency before the taxpayer has had an opportunity to invoke the jurisdiction of the Tax Court and jeopardy does not arise from delay, then the taxpayer may seek to enjoin the Commissioner's action in the district court.

In the present cases, the Commissioner exercised his authority under Section 6851 of the Code to terminate the taxable periods of the taxpayers and to demand immediate payment of the taxes for their terminated periods. Section 6851 is designed to deal with the taxpayer who is believed to be attempting to evade payment of anticipated taxes by placing himself or his property beyond the reach of the Service before the end of the taxable year. The issue in these cases upon which the courts below have divided is whether the prefatory exception in the Anti-Injunction Act is applicable where the Commissioner terminates a taxpayer's taxable year under Section 6851, without the

issuance of a notice of deficiency. If, as we contend, and the Second Circuit has held in No. 73–1808, the Commissioner's termination of a taxable year does not require the issuance of a notice of deficiency, and is not reviewable by the Tax Court, the exception is not applicable and these suits are barred by the Anti-Injunction Act.

B

1. Nothing in the statutory language of Section 6851 supports the conclusion that the Commissioner is required to issue a notice of deficiency in connection with the termination of a taxable year. The Sixth Circuit in No. 74–75 and the other courts which have held that the Commissioner must issue a notice of deficiency under Section 6851 have relied in part upon the existence of such a requirement under Section 6861. That provision states that if the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he can immediately assess such deficiency. But those decisions are based upon the erroneous assumption that the assessment authority in the case of a Section 6851 termination derives from Section 6861. That is not the case. Section 6861 does not contain any authority to make assessments. The power to make an assessment after the termination of a taxable year under Section 6851 or upon a finding of jeopardy under Section 6861, resides in Section 6201, the general statutory provision for assessments.

Moreover, Sections 6851 and 6861 are separate and distinct statutory provisions. They cannot be merged nor are their terms freely transferable from one to

another. Unlike Section 6851, which involves cutting off the taxable year at any time, Section 6861 can only be invoked after the date when the taxes for a full past taxable year are due to be paid, *i.e.*, after April 15 of the following year. Simply put, Section 6851 advances the date when taxes are due and payable, while Section 6861 advances the time for collection of taxes which are already overdue. Thus, the requirement that the Commissioner issue a notice of deficiency after the making of a Section 6861 jeopardy assessment has no significance for purposes of Section 6851.

2. The legislative history of the pertinent statutory provisions reinforces the statutory analysis that the assessment authority for the taxes made "immediately due and payable" under Section 6851 is not Section 6861 but Section 6201. Indeed, from 1918 to 1921, the statutory predecessor of Section 6851 stood in the revenue act without the predecessor of Section 6861. But even after the introduction of the predecessor of Section 6861 in 1921, its inclusion as a proviso to the appeal procedure established by that revenue act indicates that it was simply intended to provide for the early assessment of taxes where collection was jeopardized by the necessity of awaiting the outcome of an administrative appeal.

However, the scope of this administrative appeal, which was subsequently changed to review by the independent Board of Tax Appeals, never covered assessments made in connection with the termination power. Hence, there is no basis to the claim that the Commissioner must issue a notice of deficiency in such cases in order to provide access to the Tax Court.

Indeed, the Tax Court itself has consistently held that it has no jurisdiction to redetermine tax liabilities for terminated periods. The Commissioner's administrative instructions as set forth in the Internal Revenue Manual for revenue agents are to the same effect.

Moreover, the legislative evolution of Sections 6851 and 6861 and the creation of the Board of Tax Appeals (now the Tax Court) demonstrate that the amount assessed pursuant to a Section 6851 termination is not a "deficiency" within the meaning of Section 6211. That term only applies to an underpayment where the taxpayer files a full year return or where he fails to file a full year return as of the prescribed due date. Thus, a "deficiency" can only arise with respect to a full taxable year and not a terminated taxable period created by the exercise of the Commissioner's Section 6851 power.

The requirement that the Commissioner issue a notice of deficiency does not, therefore, apply to the Section 6851 termination of a taxable year prior to its normal conclusion. Since the Tax Court's jurisdiction depends upon the issuance of a notice of deficiency, that court cannot review the correctness of an assessment for a terminated period.

C

Contrary to the suggestion of some of the lower courts, there are no constitutional objections to the summary collection of income taxes determined to be due under Section 6851 if the Commissioner is not required to issue a notice of deficiency in such a case. The constitutional reservations expressed by these

courts were prompted by their concern that if the Commisioner were not required to issue a notice of deficiency in these circumstances, the taxpayer could not gain immediate access to the Tax Court to review the Commissioner's determination. There is, however, no constitutional requirement that all tax disputes be adjudicated by the Tax Court.

Lack of immediate access to the Tax Court by the taxpayers in these cases does not mean they are deprived of any particular advantage provided by that court or are without any effective judicial remedy. Indeed, there are three judicial remedies available to these taxpayers. First, they can file a claim for refund for the short period and commence a refund suit on that claim either in the district court or in the Court of Claims. The jurisdiction of those courts is broadly cast under 28 U.S.C. 1346 and does not, as does that of the Tax Court, depend upon the existence of a deficiency. Secondly, they may await the end of the full taxable year and file a full year return and a claim for refund for the full taxable year. In these circumstances, they may again commence a refund suit in the district court or in the Court of Claims. Finally, the taxpayers may await the close of the normal taxable year and the Commissioner's issuance of a statutory notice of deficiency, if a deficiency exists for the full year. Once a statutory notice is issued, the taxpayers can seek a redetermination in the Tax Court.

As this Court long ago held in *Phillips* v. *Commissioner*, 283 U.S. 589, 595, the summary administrative collection of taxes is constitutionally permissible as long as an "adequate opportunity is afforded for a

later judicial determination of the legal rights * * *." The variety of remedies available to a taxpayer subject to a Section 6851 termination fully satisfies the constitutional requirements of due process.

ARGUMENT

THESE SUITS TO ENJOIN THE ASSESSMENT AND COLLECTION OF TAXES ARE BARRED BY THE ANTI-INJUNCTION ACT BECAUSE THE COMMISSIONER IS NOT REQUIRED TO ISSUE A NOTICE OF DEFICIENCY TO A TAXPAYER WHOSE TAXABLE YEAR IS TERMINATED UNDER SECTION 6851 OF THE CODE

A. INTRODUCTION

These cases present a procedural issue of considerable importance in the administration of the revenue laws. The federal Anti-Injunction Act, 26 U.S.C. 7421 (a), Appendix A, *infra*, p. 65, states that "Except as provided in sections 6212 (a) and (c), [and] 6213(a) * * *, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *." The statute was enacted in 1867 [5] in order to prevent the same type of injunctive suits which had swept over the state taxation systems from similarly inundating the federal tax system. This Court thereafter recognized the congressional policy which underlay the passage of the Act, namely, that if the courts exercised general injunctive power with respect to the collection of taxes, the very existence of government itself would be threatened. See *State Railroad Tax Cases*, 92 U.S.

[5] The statute originated as Section 10 of the Revenue Act of March 2, 1867, c. 169, 14 Stat. 471, 475, and is now codified as Section 7421(a) of the Internal Revenue Code of 1954.

575, 613; *Cheatham* v. *United States*, 92 U.S. 85, 89; *Snyder* v. *Marks*, 109 U.S. 193–194.[6]

The question presented is whether the qualified prefatory exception in the Anti-Injunction Act—"Except as provided in sections 6212 (a) and (c) [and] 6213 (a) * * *"[7]—is applicable where the Commissioner terminates a taxpayer's taxable year under Section 6851, without the issuance of a notice of deficiency. As we shall demonstrate *infra*, these suits are barred by the Anti-Injunction Act because the Commissioner is not required to issue such a notice after his termination of a taxable year under Section 6851. The exception to the Act which relates to cases over which the Tax Court has jurisdiction does not apply here because that court has no jurisdiction to adjudicate an assessment of taxes made "immediately due and payable" under Section 6851.

[6] The statutory prohibition on injunctions against tax assessment or collection activities by the Treasury is subject to one narrowly limited exception created by this Court. In *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7, the Court unanimously held that a taxpayer could obtain an injunction only if he satisfied a two-fold test: first, he must show that "it is clear that under no circumstances could the Government ultimately prevail" on the merits of its legal claim; secondly, he must show that "equity jurisdiction otherwise exists" because of the threat of irreparable injury for which there is no adequate legal remedy. Only last Term, the Court reaffirmed the *Williams Packing* rule and upheld the bar of the Act against injunctive suits in connection with tax-exempt status. See *Bob Jones University* v. *Simon*, No. 72-1470, and *Alexander* v. "*Americans United*", *Inc.*, No. 72-1371, both decided May 15, 1974. See also *United States* v. *American Friends Service Committee*, No. 73-791, decided October 29, 1974.

[7] There is another statutory exception for civil actions by persons other than taxpayers under Section 7426 (a) and (b) (1). That exception is not applicable here.

In these cases, the Commissioner exercised his power under Section 6851, Appendix A, *infra*, pp. 60–62, to terminate the taxable year of the taxpayers and to demand immediate payment of the taxes for their terminated periods. This provision has its roots in almost the very beginnings of the modern income tax for it was first enacted in virtually identical terms as Section 250(g) of the Revenue Act of 1918, c. 18, 40 Stat. 1057. The statute is designed to deal with the taxpayer who is believed to be bent on evading payment of anticipated taxes by placing himself or his property beyond the reach of the Service before the end of the taxable year. In order to meet this contingency, Section 6851 provides that the Commissioner is authorized to terminate the taxable year when he finds "that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax * * * unless such proceedings be brought without delay * * *."

Perhaps the most notable instance of the exercise of the Commissioner's Section 6851 power involved the termination of the taxable years of Clifford and Edith Irving. Clifford Irving was the perpetrator of the so-called "Howard Hughes hoax" which involved his receipt under false pretences of $765,000 from a publishing company. When the deception was discovered, the Internal Revenue Service terminated their taxable years, finding that it was likely that Irving and his wife would abscond with the money,

and levied on some of their property. Both the district court and the court of appeals rejected the Irvings' claim for injunctive relief, which was identical in all respects to the suits involved in these cases. See *Irving* v. *Gray*, 344 F. Supp. 567 (S.D.N.Y.), affirmed, 479 F. 2d 20 (C.A. 2).

Here, as in *Irving*, it is beyond doubt that the statutory grounds for the exercise of the termination power have been satisfied in both cases.[8] In *Hall*, No. 74–75, after the state police seized dangerous drugs on respondent's premises, the Commissioner found her to be involved in illicit drug activities tending to prejudice or render ineffectual the collection of income taxes (Pet. App. A 1a; Pet. App. B 8a). Similarly, in *Laing*, No. 73–1808, petitioner was attempting to remove approximately $300,000 in cash out of the United States in a suitcase hidden in the engine compartment of his automobile (Pet. App. A 17).

However, the question upon which the Sixth and Second Circuits have divided in these cases is whether the Commissioner is required to issue a notice of deficiency to a taxpayer whose taxable year is terminated under Section 6851.[9] If, as we contend and the

[8] Section 6851 provides that the Commissioner's finding that the termination of the taxpayer's taxable year is appropriate "shall be for all purposes presumptive evidence of jeopardy" in any court proceeding to enforce collection. Neither taxpayer in these cases has introduced any evidence to rebut this presumption.

[9] Prior to *Laing*, the Second Circuit had already held in *Irving* v. *Gray*, 479 F. 2d 20, that the Commissioner was not required to issue a notice of deficiency in a Section 6851 termination. The Seventh Circuit had similarly upheld the government's position in *Williamson* v. *United States*, 31 A.F.T.R. 2d 73–809 (unreported order of April 8, 1971). In addition to the two adverse decisions of the Sixth Circuit in No. 74–75

Second Circuit held in *Laing*, No. 73–1808, there is no such requirement, the Commissioner's failure to issue such a notice does not trigger the prefatory exception to the bar of the Anti-Injunction Act.

The conclusion of the Sixth Circuit in *Hall*,[10] as well as the other courts which have held that the Com-

and *Rambo* v. *United States*, 492 F. 2d 1060, petition for a writ of certiorari pending, No. 73–2005, the Fifth Circuit in *Clark* v. *Campbell*, 501 F. 2d 108, *Aguilar* v. *United States*, 501 F. 2d 127, and *Rodger* v. *United States*, 502 F. 2d 1165 (unpublished opinion of October 2, 1974), has held that such a notice is required to be issued. Currently, a number of cases involving this issue are pending in the courts of appeals. See *Boyd* v. *United States*, 33 A.F.T.R. 2d 74–1246 (E.D. Pa.), appeal pending (C.A. 3—No. 74–1565); *Schreck* v. *United States*, 301 F. Supp. 1265, reaffirmed on reconsideration, 375 F. Supp. 742 (D. Md.), appeal pending (C.A. 4—No. 74–1566); *Rogers* v. *O'Donnell* (M.D. Fla.—No. 72–246–ORL–CIV, unpublished findings of fact and conclusions of law filed March 6, 1974), appeal pending (C.A. 5—No. 74–1731); *Baxham* v. *United States* (W.D. Ky.—CIV. No. 7743–G, unpublished order entered July 18, 1973) and *Hudson* v. *United States* (W.D. Ky.—CIV. No. 7744–G, unpublished order entered July 18, 1973), appeals pending (C.A. 6—Nos. 73–2196 and 73–2197) (consolidated); *Parker* v. *O'Hara*, 33 A.F.T.R. 2d 74–1258 (E.D. Tenn.), appeal pending (C.A. 6—No. 74–1674); *Lisner* v. *McCandless*, 356 F. Supp. 398 (D. Ariz.), appeal pending (C.A. 9—Nos. 73–2037 and 73–2038); *Woods* v. *McKeever*, 32 A.F.T.R. 2d 73–5967 (D. Ariz.), appeal pending (C.A. 9—No. 74–1133); *Williams* v. *United States*, 373 F. Supp. 71 (D. Nev.), appeal pending (C.A. 9—No. 74–1192); *Avery* v. *Sparley* (E.D. Wash.—No. 73–3860, unreported memo decision filed November 9, 1973), appeal pending (C.A. 9—No. 74–1625); *Shaw* v. *McKeever*, 33 A.F.T.R. 2d 74–1027 (D. Ariz.), appeal pending (C.A. 9—No. 74–2416). See also *Musso* v. *Commissioner*, 32 T.C.M. 849, appeal pending (C.A. 5—No. 73–3916); *Jones* v. *Commissioner*, 62 T.C. 1; and *Riley* v. *Commissioner*, 32 T.C.M. 847.

[10] The most extensive statement of the Sixth Circuit's views is set forth in *Rambo* v. *United States*, 492 F. 2d 1060, petition for a writ of certiorari pending, No. 73–2005. In *Hall*, No. 74–75, the court below concluded that its prior *Rambo* decision was controlling (Pet. App. B 9a).

missioner is required to issue a notice of deficiency in connection with a Section 6851 termination is based upon two erroneous assumptions: (1) that the assessment power with respect to amounts declared immediately due and payable under Section 6851 derives from Section 6861; and (2) that the amount determined to be "immediately due and payable" is a "deficiency" under Section 6211(a).

In our view, these assumptions are based upon a demonstrably incorrect reading of the legislative history of these provisions, which we discuss in detail in Part B.2, *infra*, pp. 27-45. That history indicates that Sections 6851 and 6861 represent discrete statutory schemes designed to collect taxes under exigent circumstances of markedly different degree. The assessment authority of both provisions is found in Section 6201(a). Therefore, the requirement that the Commissioner issue a notice of deficiency under Section 6861 cannot be incorporated into Section 6851 which is involved in these cases. Moreover, the evolution of the statutory provisions establishes that the definition of deficiency does not cover the emergency assessment made after a Section 6851 termination. That type of determination was never intended to be reviewable by the Tax Court. We believe that these conclusions are compelled by both the language and structure of the statutory scheme for the collection of taxes, and the legislative history to which we now turn.

B. IN LIGHT OF ITS LANGUAGE, STRUCTURE, AND LEGISLATIVE HISTORY, THE STATUTORY SCHEME FOR THE COLLECTION OF TAXES WHERE THE REVENUE IS IN JEOPARDY INDICATES THAT THE COMMISSIONER IS NOT REQUIRED TO ISSUE A NOTICE OF DEFICIENCY IN CONNECTION WITH THE TERMINATION OF A TAXPAYER'S TAXABLE YEAR

1. The statutory language and structure

a. Although our tax collection system depends primarily upon honest self-reporting and self-assessment, Congress has recognized that there would be instances where the Treasury would have to take immediate affirmative action in order to safeguard the collection of taxes. Thus, Section 6851(a) requires the Secretary or his delegate[11] to terminate the taxable year if he finds that a taxpayer "designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax * * *." Notice of the termination must be given the taxpayer and a demand made

[11] The Secretary's authority has been delegated to the district directors. See Treasury Regulations, Section 1.6851-1. We are advised by the Internal Revenue Service that its agents are instructed that terminations of taxable years and assessments must be used sparingly and that such actions must be personally approved by the district director or the Director of International Operations at the National Office in Washington, D.C.

for payment of the tax on the income received during the period thus terminated. The provision explicitly renders the taxes "immediately due and payable," as they ordinarily would be on the last day for filing a return and paying the tax for the full year.

Section 6851(b) permits the Commissioner to reopen the terminated taxable period each time the taxpayer is found to have received income during the current taxable year. Similarly, the taxpayer may reopen the terminated period if he files a "true and accurate return" for the terminated taxable period. Finally, under Section 6851(c), the taxpayer can avoid collection by furnishing a bond to insure his timely making of returns and his payment of the taxes assessed against him.

As we have already noted, Section 6851 is intended to enable the Commissioner to thwart attempts by a taxpayer to place his property beyond the reach of the tax collector before the end of the taxable year. But Section 6851, standing alone, is not sufficient to effect collection because it does not contain its own assessment authority. Hence, once the Commissioner terminates a taxable year, administrative collection of the amount determined to be "immediately due and payable" is achieved by means of other statutory authority which begins with the making of an assessment.

The assessment authority is set forth in Section 6201, Appendix A, *infra*, pp. 53–54, which empowers the Commissioner "to make the * * * assessments of all taxes * * *" without regard to whether a "deficiency" exists. These assessments are made simply by

recording the liability of the taxpayer in the books of account of the Internal Revenue Service. See Section 6203. Once the assessment is made, the Commissioner can invoke Section 6321 of the Code, which provides that if the taxpayer neglects or refuses to pay the tax, the amount shall be a lien in favor of the United States. This lien can be enforced or the tax can otherwise be collected by exercise of the Commissioner's levy and distraint power under Section 6331, Appendix A, *infra*, pp. 57–58.

For purposes of these cases, the most significant aspect of the entire process of termination of a taxable year under Section 6851 and the collection of the amount due is that nowhere in any of the pertinent statutory provisions is there an authorization or a requirement that the Commissioner issue a notice of deficiency to the taxpayer. Once taxes are made immediately due and payable by terminating a taxable year, the Commissioner may exercise his general assessment authority and proceed immediately to collect the tax through lien, levy, and distraint. At no point during this process, however, is there even the faintest statutory suggestion that a notice of deficiency should issue. Indeed, the very term "deficiency" is notably absent from Section 6851.

b. Although Section 6851 does not provide for the issuance of a notice of deficiency, there is another statutory mechanism designed to achieve collection under exigent circumstances which does provide for the issuance of such a notice. Section 6861(a), Appendix A, *infra*, pp. 62–63, provides that if the Commissioner believes "that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized

by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency * * *." Section 6861(b), in turn, states that if a taxpayer is subject to a jeopardy assessment prior to the issuance of a notice of deficiency, then the Commissioner must send such a notice within 60 days after making the assessment.

Contrary to Section 6851, which permits terminating a taxable year at any time, Section 6861 can be invoked only after the date upon which the taxes for a full taxable year are due to be paid, *i.e.*, after April 15 of the following year. Simply put, Section 6851 advances the time when taxes become payable, while Section 6861 advances the time for the collection of taxes that are already overdue. Thus, Section 6861 enables the Commissioner to avoid the delay inherent in the normal process under which he would issue a notice of deficiency under Section 6212(a) and the taxpayer might file a petition in the Tax Court and thereby stay collection under Section 6213(a). Because this process might well consume a considerable length of time, the amount of taxes at issue could be rendered uncollectible after they were ultimately determined to be due and owing.

In contrast to Section 6851, Section 6861(a) contains the term "deficiency", coupled with a specific reference to its definition in Section 6211. Consistent with these references to "deficiency" in Section 6861 is the single exception to Section 6861 in Section 6213(a) for cases subject to the jurisdiction of the Tax Court, which confirms the fact that such assessments are reviewable in the Tax Court. A comparison

of Section 6851 and 6861 indicates that Congress well knew how to require the issuance of a notice of deficiency when it so desired. Thus, the absence of such a requirement in Section 6851 is persuasive evidence that Congress did not intend to require a notice of deficiency in connection with the termination of a taxable year. Moreover, if terminated period assessments were similarly reviewable, one would suppose that Section 6213(a) would have contained a reference to Section 6851.

The courts which have held that the Commissioner must issue a notice of deficiency under Section 6851 have relied in part upon the existence of such a requirement in Section 6861. But as we shall demonstrate, *infra*, the issuance of a notice of deficiency to a taxpayer subject to a Section 6861 assessment where collection is jeopardized by delay is entirely consistent with its issuance in the usual type of full-year determinations, which cannot be assimilated to a Section 6851 termination. As a result, the deficiency notice requirement of Section 6861 should not be judicially incorporated into Section 6851.

While Section 6861 states that the Secretary or his delegate "shall * * * assess" after concluding that delay would endanger the revenue, the provision does not contain its own assessment authority. The phrase "shall assess" or its equivalent is employed in numerous provisions which do not purport to confer authority to assess. See, *e.g.*, Sections 6501, 6659, 6671, 6673, 6862, 6871, and 6901. But only Section 6201 specifically provides that "[t]he Secretary or his delegate is authorized and required to make * * * assessments of all taxes * * *." Thus, the power to make an assess-

ment after a finding of jeopardy, as in the case of a Section 6851 termination, likewise derives from Section 6201, the sole statutory authority for assessments. *Irving* v. *Gray, supra,* 479 F. 2d at 24.

c. The terms of the Code unambiguously provide that Section 6861 is the single exception to the general rule of suspension of collection while a case is pending in the Tax Court. Since Section 6861(a) is an exception to this rule of Section 6213(a), it follows that Section 6861(b) would require the Commissioner to send a notice of deficiency to a taxpayer subject to a jeopardy assessment. Apart from the danger of delay in collection, a Section 6861 taxpayer is in all respects identical to any other taxpayer subject to a determination that an amount for a particular full taxable year is owing. Thus, after having provided in Section 6861(a) that collection can proceed in such a case even though the taxpayer may invoke the jurisdiction of the Tax Court, there was no reason to preclude the operation of the otherwise applicable process of the issuance of the notice of deficiency and the filing of a Tax Court petition. Under these circumstances, the Tax Court does not play its usual role as a forum where a tax dispute can be litigated prior to payment, because collection will have already occurred under the advanced jeopardy assessment timetable.

Unlike the Section 6861 taxpayer, however, a taxpayer whose taxable year is terminated under Section 6851 cannot be assimilated to one who is subject to the usual type of deficiency determination for a full taxable year. Pursuant to Section 6851(b), a terminated period can be reopened by the Commissioner

each time he finds the taxpayer to have received additional income within the current taxable year. After such reopening, the Commissioner may enlarge the terminated period by again terminating the year at a later point in time. See Treasury Regulations, Section 1.6851–1(b)(1). Similarly, the taxpayer may reopen the terminated period if he files "a true and accurate return * * * for such taxable period." See Section 6851(b).

This is as it should be because subsequent events during the taxable year would, in almost all cases, modify the amount originally made "immediately due and payable" for the terminated period. Thus, in marked contrast to a deficiency for a full taxable year which Section 6212(c) generally provides cannot be increased once the taxpayer files a Tax Court petition,[12] the liability determined pursuant to a Section 6851 termination is tentative in character, insofar as it can be changed by both tax collector and taxpayer alike.

Under these circumstances, the tax determined to be "immediately due and payable" pursuant to a Section 6851 termination cannot be the basis for invoking the jurisdiction of the Tax Court when it is subject to continual revision throughout the remainder of the full taxable year. It seems highly inappropriate

[12] However, the Commissioner is permitted to raise an additional deficiency in his answer in the Tax Court, which has jurisdiction "to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer * * *." Section 6214(a) of the Code.

to permit Tax Court review of an assessment for a terminated period when a reopening of the period might well cause that court's jurisdiction to lapse. As the Tax Court itself has observed in consistently refusing to exercise its jurisdiction over such terminated periods, a Section 6851 termination merely results in a "provisional statement of the amount which must be presently paid as a protection against the impossibility of collection." *Ludwig Littauer & Co.* v. *Commissioner,* 37 B.T.A. 840, 842. See also *Puritan Church—The Church of America* v. *Commissioner,* 10 T.C.M. 485, 494, affirmed *per curiam,* 209 F. 2d 306 (C.A.D.C.), certiorari denied, 347 U.S. 975; and *Page* v. *Commissioner,* 297 F. 2d 733 (C.A. 8).[13]

Finally, this uniform view of the Tax Court finds further confirmation in the understanding of those charged with the administration of these statutes. We are advised by the Internal Revenue Service that every edition of the Internal Revenue Manual for revenue agents since its inception in 1953 has provided that a notice of deficiency is not to be issued in connection with the termination of a taxable year. Since the issue in these cases involves the proper procedure to be followed by the Service in the exercise of its termination power, the Commissioner's instructions in this regard are entitled to great weight. See *United States* v. *Correll,* 389 U.S. 299, 306–307.

[13] See also *DaBoul* v. *Commissioner,* T.C. No. 287–69 (order dismissing petition for lack of jurisdiction, entered June 19, 1969), appeal dismissed *per curiam,* 429 F. 2d 38 (C.A. 9); *Riley* v. *Commissioner,* 32 T.C.M. 847 (decided August 20, 1973); *Musso* v. *Commissioner,* 32 T.C.M. 849 (decided August 20, 1973), appeal pending (C.A. 5—No. 73-3916).

In light of the above analysis, we think it clear that Sections 6851 and 6861 are separate and distinct statutory provisions the terms of which are not freely transferable from one to another. Thus, the requirement that the Commissioner issue a notice of deficiency no later than 60 days from the making of an assessment under Section 6861 has no significance for purposes of Section 6851. That termination provision, as we shall now demonstrate, antedated the establishment of the Tax Court and the concomitant definition of a deficiency over which that court has been given jurisdiction as a non-prepayment forum. Thus, the Tax Court was never intended to adjudicate the correctness of the tentative emergency assessments made in connection with the termination of a taxable year.

2. The legislative history demonstrates that Sections 6851 and 6861 are independent provisions and that an assessment pursuant to a termination of a taxable year does not give rise to a "deficiency"

a. The foregoing analysis of the statutory text and structure showing that a notice of deficiency is not required when the Commissioner terminates a taxable year under Section 6851 is confirmed by the pertinent legislative history. The following detailed description of the evolution of Sections 6851 and 6861 and their relation to the establishment of the Board of Tax Appeals demonstrate two propositions: (1) that Sections 6851 and 6861 are independent provisions so that the

assessment authority for terminations under Section 6851 does not derive from Section 6861, and (2) that the tentative assessments made as a result of the termination of a taxable year were never intended to be appealable to the Board or to its successor, the Tax Court.

(1) *The Revenue Act of 1918.* The statutory predecessor of Section 6851 was Section 250(g) of the Revenue Act of 1918, c. 18, 40 Stat. 1057. Like its virtually identical present counterpart in Section 6851(a) of the 1954 Code, Section 250(g) empowered the Commissioner to terminate a taxpayer's taxable year when he found that the taxpayer designed to defeat the payment of his subsequently due taxes by concealment of assets or departure from the United States.[14] Once the taxable year was so terminated, the assessment of the amount determined to be due was made under Section 3182 of the Revised Statutes, the general statutory authority for assessment of internal revenue taxes.[15]

[14] Section 250(g) of the Revenue Act of 1918 also authorized the Commissioner to demand the tax for the preceding taxable year or so much of such tax as remained unpaid "whether or not the time otherwise allowed by law for filing return and paying the tax has expired * * *." This statutory power has been carried forward in Section 6851(a) of the Internal Revenue Code of 1954. The practical significance of this aspect of the termination power is to allow the Commissioner to demand payment during the period between the end of a taxable year (*e.g.*, December 31st) and the date when the return for that year is due (April 15). See *Irving* v. *Gray*, 479 F. 2d 28 (C.A. 2).

[15] Both the Fifth Circuit in *Clark* v. *Campbell*, 501 F. 2d 108, and the district court in *Schreck* v. *United States*, 301 F. Supp. 1265 (D. Md.), erroneously assumed that the assessment authority for a Section 250(g) termination was under Section 3176 of the Revised Statutes. But that provision by its terms only applied to those instances when a taxpayer refused or failed to make a required return or filed a false or fraudulent return. Section 3182, however, set forth the general authority under which internal revenue taxes were assessed. See *Calkins* v. *Smietanka*, 240 Fed. 138 (E.D. Ill.).

At the time of the enactment of Section 250(g), an individual on a calendar year basis was required to file his return on or before March 15. The tax could be paid either in four equal installments with the first payment due on the date fixed for filing the return or could be paid in full on the date prescribed for filing the return. If any part of the tax remained unpaid after the date when it was due and for ten days after notice and demand, an additional assessment was made and the taxpayer was required to pay the additional tax unless he filed a claim for abatement of the assessment. See Revenue Act of 1918, Sections 227(a) and 250(a) and (e). Judicial review of the assessment could only be obtained after payment of the disputed amount by way of a refund suit in the district court or the Court of Claims under Section 3226 of the Revised Statutes, which was first enacted as Section 19 of the Revenue Act of July 13, 1866, c. 184, 14 Stat. 98, 152. See 28 U.S.C. 1346 (a)(1).

(2) *The Revenue Act of 1921.* The evolution of the provision applicable where the Commissioner believes that collection would be jeopardized by delay, now set forth in Section 6861, proceeded independently of the termination power. Its earliest statutory predecessor was enacted as the final proviso to Section 250(d) of the Revenue Act of 1921, c. 136, 42 Stat. 227, Ap-

pendix B, *infra*, pp. 69–71,[16] and was intended to exclude one type of case from the operation of administrative appeal procedure created by that Revenue Act.

Under Section 250(d), an administrative appeal procedure was established for the resolution of taxpayer disputes with what was then called the Bureau of Internal Revenue. If an examination of a return yielded a "deficiency," which the second paragraph of Section 250(b) defined as the difference between the amount paid and "that which should have been paid" (Appendix B, *infra*, p. 68),[17] then the taxpayer was to be given a notice and a period of not less than thirty days in which to file an administrative appeal. Prior to a final decision on the taxpayer's appeal, no assessment could be made.

However, the final proviso of Section 250(d), the antecedent of present Section 6861, provided as follows: "That in cases where the Commissioner believes that the collection of the amount due will be jeopardized by such delay he may make the assessment without giving such notice or awaiting the conclusion of such hearing." Thus, the sole purpose of the statutory predecessor to Section 6861 was to eliminate the delay of the newly-established adminis-

[16] Because of the importance of Section 250 of the Revenue Act of 1921 to the legislative history bearing on the question presented, we have set it forth in its entirety in Appendix B, *infra*, pp. 67–74.

[17] If the Commissioner rendered an adverse decision on the taxpayer's appeal, the deficiency was assessed and the additional tax was required to be paid within ten days after notice and demand for payment

trative appeal procedure when it was necessary to protect the revenue in situations such as the impending insolvency of the taxpayer and the existence of potentially competing claims of other creditors. However, the proviso did not grant assessment authority since that authority continued to be provided only by Section 3182 of the Revised Statutes.

Significantly, the administrative appeal procedure created by Section 250(d) of the Revenue Act of 1921 was not available to a taxpayer subject to an assessment made after the termination of his taxable year. The structure of Section 250 of the Revenue Act of 1921 so demonstrates since the Commissioner's termination power was carried forward separately in subsection (g) of Section 250 with no reference to the administrative appeal described in subsection (d). See S. Rep. No. 275, 67th Cong., 1st Sess., pp. 20–21. Indeed, the fact that Section 250(d) stated that the administrative appeal was to follow the "examination of a return" strongly indicates that the termination of a taxable year, which does not occur after the examination of any return, could not be appealed by the taxpayer under the new procedure.

(3) *The Revenue Act of 1924.* Although administrative review of deficiency determinations provided some means of resolving controversies between taxpayers and the Bureau of Internal Revenue, the impartiality of the procedure was limited by the fact that it was conducted by Bureau employees. As a result, in 1924 Congress established the Board of Tax Appeals (now the United States Tax Court) in which

a taxpayer prior to payment could obtain an independent review of his tax liabilities if the Commissioner disagreed with the amount of taxes reported. See Section 900, Revenue Act of 1924, c. 234, 43 Stat. 253; H. Rep. No. 179, 68th Cong., 1st Sess., pp. 7–8.

When the Board of Tax Appeals was created, however, it was given only limited jurisdiction. Pursuant to Section 900(e) of the Revenue Act of 1924, the Board was authorized to hear and determine only appeals filed under: (1) Section 274 (relating to deficiencies in income taxes); (2) Section 279 (relating to claims for abatement of deficiencies assessed under Section 274(d)); (3) Section 308 (relating to deficiencies in estate taxes);[18] and (4) Section 312 (relating to claims for the abatement of estate taxes assessed under Section 308(d)).[19] The Board was not authorized to entertain appeals from the Commissioner's determination that taxes were immediately due and payable, in connection with the termination of a taxable year under Section 282 of the 1924 Act. Thus, the only means by which a taxpayer whose tax evasion designs had caused the Commissioner to terminate his normal taxable year could avoid immed-

[18] Section 308 of the Revenue Act of 1924 contained provisions with respect to deficiencies in estate taxes which were generally analogous to the provisions of Section 274 pertaining to deficiencies in income taxes. Section 324 of the 1924 Act made assessment, collection, and payment of gift taxes subject to the same general provisions as the estate tax.

[19] Sections 308(d) and 312 of the Revenue Act of 1924 were applicable to jeopardy assessments of estate taxes and corresponded generally to Sections 274(d) and 279, dealing with jeopardy assessments with respect to income taxes.

iate collection was to furnish security that he would make a timely return and pay the tax when it would otherwise be due. See Section 282 (b) and (c) of the Revenue Act of 1924.[20]

The 1924 Act introduced a more precise definition of the term "deficiency" which is virtually identical to that present definition in Section 6211(a) of the 1954 Code, Appendix A, *infra*, p. 55. Insofar as it pertained to income taxes, Section 273(1) of that Act defined "deficiency" as "[t]he amount by which the tax imposed by this title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed * * * as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax * * *." Section 273(2) set forth a similar definition for the case where "no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer * * *."[21]

The reasons for these changes are explained by the committee reports (H. Rep. No. 179, 68th Cong., 1st Sess., p. 24; S. Rep. No. 398, 68th Cong., 1st Sess., p. 30) accompanying the legislation, as follows:

[20] Corresponding security provisions had been provided in Section 250(g) of both the 1918 and 1921 Acts.

[21] Paragraphs (1) and (2) of Section 273 of the 1924 Act have been merged in Section 6211(a) of the 1954 Code, the present statutory definition of a deficiency. It speaks of "the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon." See also Treasury Regulations, Section 301.6211-1.

> The term "deficiency" is here defined. Under the existing law (section 250(b), second paragraph), the term "deficiency" is not defined with exactness. Under the proposed provisions, credits and refunds for each year will be considered in the determination of a deficiency for that particular year. The proposed definition of "deficiency" also includes amounts of tax found by the Commissioner to be due on returns prepared or approved by him under section 3176, Revised Statutes, in cases in which a person, association, or corporation has failed to make a return or has made a false or fraudulent return. Such amounts are not included in the definition in the existing law, although it is clear that they are properly termed a "deficiency." The inclusion of these amounts within the term "deficiency" will permit the taxpayer to appeal from the determination of the Commissioner in such cases to the Board of Tax Appeals, and will enable the collection of interest upon amounts found to be due.

There are two indications in the above-quoted committee report that the term "deficiency" was not intended to cover the amount assessed after a Section 6851 termination. If a taxpayer filed a full year return and the Commissioner determined a "deficiency", that determination could only have occurred after the close of the normal taxable year. But in discussing the possibility that the taxpayer might not file a return, Congress observed that the Commissioner had the power to make a return for such a delinquent taxpayer under Section 3176 of the Revised Statutes. That provision, now carried forward as Section 6020(b) of the 1954

Code, only applied to the case where the taxpayer failed to file a return "at the time prescribed" by "law or regulation." No such return was required to be filed by a taxpayer subjected to a Section 6851 termination at a particular time prescribed by the Code or Regulations. Thus, the Commissioner's power to make a return for a delinquent taxpayer could only be exercised after the close of the normal taxable year.

Secondly, the final reference by the committee to interest upon an amount due also excludes a Section 6851 termination. Interest on underpayments only runs from the "last date prescribed for payment," *viz.*, the due date of the full year return, which again can only occur after the close of the taxable year. See Section 6601(a) of the 1954 Code;[22] Treasury Regulations, Section 301.6601–1(c)(3). But there is no interest imposed upon an amount assessed after a Section 6851 termination because that amount is not due to be paid on the "last date prescribed for payment."

Accordingly, the Congressional understanding of the definition of "deficiency" demonstrates that it was not intended to encompass the amount which becomes "immediately due and payable" upon the termination of a taxable year.

Finally, the exception to the administrative appeal under the 1921 Act for cases where collection would be jeopardized by delay was carried forward in the independent Board of Tax Appeals review created by the 1924 Act. If the Commissioner determined that

[22] A similar rule regarding interest was embodied in Section 274(b) of the 1924 Act.

the taxpayer had reported less tax than was due he was required to mail to the taxpayer a notice of the proposed deficiency. Within 60 days of the mailing of the notice the taxpayer could file an appeal with the Board of Tax Appeals, and no part of the deficiency could normally be assessed until after a final decision by the Board. Revenue Act of 1924, Section 274 (a) and (b).[23]

However, just as the prior administrative appeal procedure was not permitted to delay assessment or collection when the revenue was in jeopardy, so Section 274(d) of the 1924 Act required the Commissioner immediately to assess the deficiency and to give notice and demand for payment of the taxes, whether or not he had previously given notice of the deficiency or whether the taxpayer had filed an appeal with the Board of Tax Appeals. Under Section 279 (a) and (b) of the Revenue Act of 1924, a taxpayer who had been subjected to an assessment of a deficiency where collection was in jeopardy had ten days within which he could file a claim in abatement, which had to be accompanied by a bond in an amount and with such sureties that the Commissioner deemed necessary to protect the revenue.

If the taxpayer did not file such a claim, the Commissioner could collect the deficiency. If the claim was

[23] Section 274(b) of the 1924 Act provided that if the Board agreed with the Commissioner's determination of the deficiency it could be assessed without further delay. However, if the Board found that there was no deficiency then an assessment was barred, but the Commissioner could, within a period of one year after the Board's decision, bring an action in the district court to collect the deficiency.

filed and disallowed by the Commissioner, the taxpayer could, within 60 days of the notice of disallowance, file an appeal with the Board.[24] Nevertheless, collection would proceed while the case was pending before the Board.

(4) *The Revenue Act of 1926.* The basic jurisdiction of the Board of Tax Appeals remained unchanged through the enactment of the Revenue Act of 1926, c. 27, 44 Stat. 9.[25] That jurisdiction continued

[24] If the appeal was allowed by the Board, the Commissioner was required to abate the assessment. However, he was permitted, within a period of one year after the decision of the Board, to bring an action in the district court to collect the deficiency. See Section 279(b) of the Revenue Act of 1924.

[25] There was, however, one change effected by the 1926 Act concerning the ability of the Board of Tax Appeals to reach a final decision in those types of cases committed to its jurisdiction. While prior revenue acts had permitted the Commissioner to bring an action in the district court to collect a deficiency even where the Board had held that there was no deficiency, Section 1001(a) of the 1926 Act eliminated recourse to the district courts by providing for direct appeal from the Board to the circuit courts of appeals.

The 1926 Act did enlarge the original jurisdiction of the Board of Tax Appeals to consider deficiencies beyond those shown in the Commissioner's notice, provided that he made his additional claim known at or before the hearing on the notice. See Section 274(e). Cf. Section 6214(a) of the 1954 Code. In addition, the Board was given jurisdiction to determine that the taxpayer not only did not owe the taxes shown in the Commissioner's notice, but had overpaid. See Section 284(e). Cf. Section 6512(b) of the 1954 Code.

The 1926 Act also eliminated the gift tax that had been imposed under the Revenue Act of 1924. But the gift tax was reimposed by the Revenue Act of 1932, and gift tax deficiencies have at all times since then been subject to redetermination by the Board of Tax Appeals (now the Tax Court). See Section 501, *et seq.*, of the Revenue Act of 1932, c. 209, 47 Stat. 169, and Section 2501, *et seq.*, of the 1954 Code.

to be limited to the redetermination of deficiencies in income or estate taxes. Moreover, the definition of "deficiency" was carried forward in identical form from Section 273 of the 1924 Act to the same numbered section of the 1926 Act. Thus, the taxpayer whose taxable year was terminated still could not appeal to the Board. As had been provided by the prior revenue acts, he could avoid immediate collection of the tax only by providing the security permitted to be furnished under the termination provision itself. See Section 285(b) and (c) of the 1926 Act.

While the 1926 Act did not alter the Commissioner's termination power or permit Tax Court review of its exercise, it did somewhat enlarge the rights of a taxpayer subject to an asessment where the Commissioner believed that delay would jeopardize collection.[26] Unlike the procedure outlined by the 1924 Act, a taxpayer against whom a jeopardy assessment was made was no longer required to file a claim in abatement (together with a bond) if he wished to have the deficiency redetermined by the Board. Under the 1926 Act, such a taxpayer could have the deficiency redetermined whether or not he furnished a bond because Section 279(b) required the Commissioner to issue a notice of deficiency within 60 days of the making of the jeopardy assessment, if he had not already done so. However, the taxpayer was still required to post a bond within ten days of the jeopardy assessment. See Section 279(f) of the 1926 Act.

[26] The jeopardy assessment provision was carried forward as Section 279(a) of the 1926 Act.

(5) *The 1954 Code.* Two final changes to these statutory provisions were made at the time of the 1954 codification.[27] Neither of these changes, however, altered the jurisdictional framework of the Tax Court.[28]

First, the termination provision was amended by the addition of subsection (b) to Section 6851, providing for the reopening of a terminated taxable period. This provision permitted the Commissioner to reopen a terminated period where the taxpayer received additional income during the current taxable year. Similarly, the taxpayer could reopen the terminated period upon the filing of a true and accurate

[27] From 1928 through the adoption of the Internal Revenue Code of 1939, there were no significant changes to the termination or jeopardy assessment provisions or to the jurisdiction of the Board of Tax Appeals. See Sections 147, 271–273 of the Revenue Act of 1928, c. 852, 45 Stat. 791; Sections 146, 271–273 of the Revenue Act of 1932, c. 209, 47 Stat. 169; Sections 146, 271–273 of the Revenue Act of 1934, c. 277, 48 Stat. 680; Sections 146, 271–273 of the Revenue Act of 1936, c. 690, 49 Stat. 1648; Sections 146, 271–273 of the Revenue Act of 1938, c. 289, 52 Stat. 447; and Sections 146, 271–273 of the Internal Revenue Code of 1939.

Moreover, there was no alteration to the Commissioner's assessment authority. Section 3182 of the Revised Statutes was recodified as Section 3640 of the 1939 Code. Section 3176 of the Revised Statutes, which gave the Commissioner the power to make returns for taxpayers who failed to file or who filed fraudulent returns and to make assessments in such cases, was carried forward to Sections 3612 (making of returns) and 3640 (assessment authority) of the 1939 Code. The Commissioner's power to make returns for delinquent taxpayers is now set forth in Section 6020(b) of the 1954 Code.

[28] The basic assessment authority remained unchanged at the time of the 1954 codification. The general assessment provision contained in Section 3640 of the 1939 Code was re-enacted as Section 6201(a) of the 1954 Code.

return for the full year. See Treasury Regulations, Section 1.6851–1(b) and (c); H. Rep. No. 1337, 83d Cong., 2d Sess., p. A421; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 597.

Secondly, Section 6863(b)(3), Appendix A, *infra*, pp. 63–65, was added to the 1954 Code by the Senate Finance Committee. It provides that where the Commissioner makes an early jeopardy assessment of a deficiency under Section 6861 and seizes property in aid of collection, the sale of the property (with certain exceptions) will be stayed during the period within which the Tax Court (formerly the Board of Tax Appeals) might retain, or obtain, jurisdiction to redetermine the deficiency.[29] See S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 597–598. Significantly, no similar limitation on the Commissioner's power of sale was enacted with respect to Section 6851 terminations.[30]

b. Two points emerge from the foregoing description of the evolution of the pertinent statutory provisions which are critical to the question in these

[29] Under Section 6863(b)(3)(B) the property could be sold if the taxpayer consented to the sale, if the Commissioner determined that conservation and maintenance expenses would greatly reduce the net proceeds from the sale, or if the property was of the type described in Section 6336 (relating to perishable goods). The sale restriction was applicable only with respect to assessments made after January 1, 1955. See Section 6863(b)(3)(C).

[30] Nor did Congress provide for a stay of the sale of property seized in connection with the immediate assessment of taxes, pursuant to Section 6862 of the 1954 Code (dealing with the immediate collection of taxes other than income, estate, or gift taxes).

cases. First, contrary to *Rambo* v. *United States*, 492 F. 2d 1060 (C.A. 6), *Clark* v. *Campbell*, 501 F. 2d 108 (C.A. 5), and *Schreck* v. *United States*, 301 F. Supp. 1265, 1272–1273 (D. Md.), the assessment authority for the taxes made "immediately due and payable" under Section 6851 is not Section 6861, but Section 6201. Indeed, from 1918 to 1921, the revenue act contained only the predecessor of Section 6851 and not the predecessor of Section 6861. But even after the introduction in 1921 of the predecessor of Section 6861, its inclusion as a proviso to the administrative appeal procedure indicates that it was intended simply to provide for assessment of taxes without the necessity of awaiting the outcome of the administrative appeal where collection would be jeopardized by delay.

In short, Section 6861 provides only for an early assessment, but it is not the authority to make an assessment itself, which has always resided in the general assessment provision now set forth in Section 6201 of the 1954 Code. Thus, the Commissioner's power to terminate a taxable year under Section 6851 and subsequently to assess under Section 6201 is not dependent upon Section 6861.[31] There is accordingly no statutory basis for the incorporation of the notice

[31] The independence of Sections 6851 and 6861 from each other is further demonstrated by the fact that they have different provisions for furnishing a bond. See Sections 6851(e) and Section 6863(a). Under the latter bond provision applicable to jeopardy assessments, the sale of property seized by the Service may be stayed pending a Tax Court decision. However, the sale of seized property cannot be stayed when the collection action is pursuant to a Section 6851 termination. See p. 40, *supra*.

of deficiency requirement of Section 6861(b) into Section 6851.[32]

Secondly, the legislative evolution of Sections 6851 and 6861 and the creation of the Board of Tax Appeals demonstrate that the amount assessed pursuant to a Section 6851 termination is not a "deficiency" within the meaning of Section 6211. The key to an understanding of the term "deficiency" lies in the 1921 Act. That Act established the administrative appeal which was the precursor of the independent review of the Board of Tax Appeals. For purposes of that procedure, Section 250(b) of that Act defined "deficiency" as the difference between "the amount already paid * * * [and] that which should have been paid." At the time of termination, however, neither the Commissioner nor the taxpayer would be able to specify "[the tax] which should have been paid" because no tax was required to have been paid at that time. Since the difference between the tax paid and the tax that should have been paid could only be determined after the close of the normal taxable year, the deficiency concept was simply inapplicable to an assessment made for a terminated taxable period. It would therefore follow that no notice of deficiency would have had to be issued for a terminated period and that the administrative appeal established under the 1921 Act would not have been available to review such an assessment.

The same analysis is fully applicable to the definition of "deficiency" under the 1954 Code. Section 6211(a), which defines "deficiency" in essentially identical terms to those in Section 273 of the 1924 Act, generally speaks of the amount by which the tax imposed by subtitles A and B, or chapter 42,[33] exceeds "the amount shown as the tax by the taxpayer upon his return [and paid], if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon * * *." As our discussion of the legislative history of Section 273 of the 1924 Act (*supra*, pp. 33–35) pointed out, there are two possibilities contemplated by this definition—the taxpayer either has filed a return at the prescribed time or he has not. If he has filed a return, he has done so after the close of the normal taxable year, so that the definition of "deficiency" would not cover te Section 6851 termination.

The possibility that the taxpayer has not filed a return cannot refer to a Section 6851 termination when the due date for filing an annual return has not

[32] In holding that Section 6861 provides the assessment authority for Section 6851, the Sixth Circuit in *Rambo* v. *United States*, *supra*, 492 F. 2d at 1064, concluded that "it is reasonable that Congress intended that the next succeeding section in the code (Sec. 6861), entitled 'Jeopardy Assessments,' should provide that authority." But this type of reasoning is explicitly foreclosed by Section 7806(b), which provides that no inference is to be drawn from the location of a particular section or any part of a descriptive title. That provision was first enacted as Section 6 of the Act of February 10, 1939, 53 Stat. 1, 2, which codified the 1939 Internal Revenue Code.

Similarly, petitioner Laing cannot rely (Br. 10–11) upon the cross-reference provisions of Sections 6201(d) and 6216. Section 7806(a) provides that such cross-references "where the word 'see' is used, are made only for convenience, and shall be given no legal effect."

[33] Subtitles A and B, and chapter 42, refer respectively to the income tax, the estate and gift tax, and the excise tax upon private foundations.

passed. The Commissioner's power to make a return for a delinquent taxpayer under Section 6020(b) of the Code is limited to the case where the taxpayer has not filed a return "at the time prescribed" by "law or regulation." There is, however, no prescribed due date for a short-year return to be filed by a taxpayer subject to a Section 6851 termination. Moreover, prior to the end of the year, neither the Commissioner nor the taxpayer will be able to ascertain the "tax imposed" by Section 1 of the Code because that computation requires knowledge of the taxable income of a full year with respect to which the graduated tax rates are applied.[34] *Irving* v. *Gray, supra,* 479 F. 2d at 24; *Williamson* v. *United States, supra,* 31 A.F.T.R. 2d 73–800 (C.A. 7) (unreported order of April 8, 1971). As a result, the implicit reference in Section 6211 to a situation where the taxpayer does not file a return can only refer to the case where he has not filed a return as of the prescribed due date, *i.e.,* after the close of the normal taxable year.[35] Thus, under both possibilities contemplated by Section 6211 (a), a "deficiency" can be determined only after the

[34] Indeed, if the amount assessed upon termination were a "deficiency", the splitting up of a single taxable year into a number of short terminated periods could result in a lower overall tax liability because of the graduated rates imposed by Section 1 of the Code. The purpose of Section 6851(b), the reopening mechanism, is to avoid this problem. See H. Rep. No. 1337, 83d Cong., 2d Sess., p. A421; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 597.

[35] In concluding that a taxpayer subject to a Section 6851 termination is required to file a short-period return so that the failure to do so would be covered by Section 6211(a), both the Sixth Circuit in *Rambo* v. *United States, supra,* 492 F. 2d at

close of a complete taxable year. The requirement that the Commissioner issue a notice of deficiency does not, therefore, apply to the Section 6851 termination of a taxable year prior to its normal conclusion.[36] Accordingly, such terminations are not reviewable in the Tax Court, for that court requires the determination of a "deficiency" before its jurisdiction can be invoked.

1064, and the Fifth Circuit in *Clark* v. *Campbell, supra,* 501 F. 2d at 117, n. 27, relied upon Section 443(a)(3) of the 1954 Code. That section provides that a short-period return "shall be made * * * [w]hen the Secretary or his delegate terminates the taxpayer's taxable year under section 6851."

While the language of Section 443(a)(3) requires the filing of a return for the terminated period, there are no further legislative or regulatory directions or requirements as to how or when such a return is to be filed. Treasury Regulations, Section 1.443–1(a)(3) refers only to Section 1.6851–1. Under the latter provision, the only reference to a return is with respect to the full year return that must be filed on or before April 15, pursuant to Sections 6012 and 6072. Hence, the filing of a short-period return does not appear to be explicitly prescribed by the Code in the same manner as a full-year return. Indeed, the fact that the taxpayers in these cases did not file such returns suggests that the requirement is not well understood. Nor does the Code impose any civil or criminal penalty for the failure to file such a short-period return. But whether or not such a terminated period return is required to be filed, the "tax imposed" by Section 1 of the Code could not be determined until the end of the full taxable year, for which a return must be filed on or before April 15. Thus, there could be no "deficiency" within the meaning of Section 6211(a) until that time.

[36] In holding that the amount determined to be immediately due and payable under Section 6851 is a "deficiency", the district court in *Schreck* v. *United States, supra,* 301 F. Supp. at 1275, relied upon the Regulations under Section 273 of the 1926 Act. They provided that where the taxpayer failed to make a return "the deficiency is the * * * correct amount of the tax." Treas-

C. THE SUMMARY COLLECTION OF INCOME TAXES DETERMINED TO BE DUE UNDER SECTION 6851 WITHOUT A NOTICE OF DEFICIENCY POSES NO CONSTITUTIONAL PROBLEMS

Although the question whether the Commissioner is required to issue a notice of deficiency in connection with a Section 6851 termination of a taxable year is statutory in character, the courts that have imposed such a requirement have suggested that a contrary result would produce "significant constitutional problems." *Rambo* v. *United States, supra,* 492 F. 2d at 1064–1065. See also *Schreck* v. *United States, supra,* 301 F. Supp. at 1281. The constitutional reservations expressed by these courts were prompted by their concern that if the Commissioner were not required to issue a notice of deficiency in these circumstances, the taxpayer could not gain immediate access to the Tax Court to review the Commissioner's determination.

It is true that the jurisdiction of the Tax Court to determine liability prior to payment is predicated on the existence of a "deficiency" within the meaning of Section 6211(a) and the Commissioner's issuance

ury Regulations 69 (1926 Rev. Act.), Art. 1231. But that regulation assumed that the taxpayer was obligated to make a return at a prescribed time and failed to do so, a possibility that could only occur after the close of the taxable year. Similarly, the Sixth Circuit in *Rambo* v. *United States, supra,* 492 F. 2d at 1064, erroneously assumed that the reference in Treasury Regulations, Section 301.6211–1 (a) to the situation where a taxpayer fails to file a return includes such a failure after the termination of a taxable year. But, like its earlier counterparts, this regulation does not mention a Section 6851 termination. In light of the legislative history of the definition of a deficiency, there is no basis for construing the regulation to include a termination of a taxable year.

of a notice of deficiency under Section 6212(a). As a result, a notice of deficiency has been described as "[a] ticket to the tax court." *Corbett* v. *Frank,* 293 F. 2d 501, 502 (C.A. 9). See also *Mason* v. *Commissioner,* 210 F. 2d 388 (C.A. 5). But that lack of immediate access to the Tax Court by the taxpayers in these cases does not mean they are without any effective judicial remedy to challenge the Commissioner's action. To the extent that the courts have regarded Tax Court review as the exclusive remedy, and intimated that there would be constitutional problems raised by the absence of such review, they are in error.

We think it clear that taxpayers subject to a Section 6851 termination have access to the district courts or the Court of Claims through a refund suit. As the court below in *Laing,* No. 73–1808, observed, once the Service has seized any of the taxpayer's property in satisfaction of the assessment, the taxpayer subject to a Section 6851 termination has the right "at any time" (Pet. App. A 17) to file a claim for refund for the short period either by making a short-period return and showing an amount due less than the amount seized or by filing a formal claim for refund (Form 843). See *Rogan* v. *Mertens,* 153 F. 2d 937 (C.A. 9). See also Treasury Regulations, Section 301.6402–3(a)(1). While the Commissioner has six months to process such a claim before the taxpayer can institute suit (see Sections 6532(a) and 7422(a) of the 1954 Code), refund claims are often acted upon in far less time.[37]

[37] For example, in No. 73–1808, petitioner Laing filed a refund claim on March 1, 1973 which was denied only eight days later on March 9, 1973 (see Brief for the Petitioner in No. 73–1808, p. 34, n. 11).

If the claim is denied, the taxpayer may immediately commence suit in the district court or the Court of Claims, both of which have jurisdiction to consider "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, * * * or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws" (28 U.S.C. 1346(a)(1)). This broad jurisdiction of the district courts and the Court of Claims over refund suits does not, as in the case of the Tax Court, depend upon the existence of a "deficiency" within the meaning of the Code. Moreover, there is no particular advantage to the taxpayer in Tax Court review of these termination cases.

Alternatively, a taxpayer subject to a Section 6851 termination may await the end of the full taxable year and file a full year return claiming a refund. See *Irving* v. *Gray, supra,* 479 F. 2d at 24. But whether the taxpayer files a short-period or full taxable year refund claim, he will be able to sue for the refund even if the value of the property seized is less than the amount of the assessment. The rule of *Flora* v. *United States,* 357 U.S. 63, on rehearing, 362 U.S. 145, which ordinarily requires the payment of the entire deficiency as a prerequisite to a refund suit would not be applicable. The rationale of *Flora*—to prevent the blurring of the line between Tax Court and district court jurisdiction—would not govern a case where no "deficiency" has been determined. In that situation, there would be no potential Tax Court

jurisdiction to infringe upon the jurisdiction of the district court. Accord: *Irving* v. *Gray,* 479 F. 2d at 24–25, n. 6; *Lewis* v. *Sandler,* 498 F. 2d 395, 400 (C.A. 4).

Finally, the taxpayer subject to a Section 6851 termination may await the close of the normal taxable year and file a full-year tax return. Once a full-year return is filed, the Commissioner may determine that additional tax is due for the full year. In that situation, the statutory definition of a "deficiency" will be met and the Commissioner will be required to issue a notice of deficiency. The taxpayer would then be able to seek a redetermination in the Tax Court, either to contest the additional tax asserted by the Commissioner to be due, or to determine whether he has made an overpayment for the full year.

Thus, while a taxpayer whose taxable year is terminated may not gain immediate access to the Tax Court, he can seek prompt relief in the district court or the Court of Claims and may ultimately be able to petition the Tax Court for a redetermination. There is no constitutional requirement that all tax disputes be adjudicable in the Tax Court. Indeed, that court only has jurisdiction over income, estate, and gift taxes and cannot resolve disputes involving the large number of excise taxes, such as F.I.C.A., F.U.T.A., and other excise taxes. Pursuant to Section 6862 of the Code, the Commissioner can assess those types of taxes prior to the due date for their payment where he finds that their collection is in jeopardy. The

Tax Court would have no jurisdiction to review the correctness of those excise tax assessments.

In sum, the variety of remedies available to a taxpayer subject to a Section 6851 termination fully satisfies the constitutional requirements of due process. This Court in *Phillips* v. *Commissioner*, 283 U.S. 589, 595, long ago unanimously established that the taxing authorities may lawfully seize property for payment of taxes in summary administrative proceedings, prior to an adjudication of liability, where "adequate opportunity is afforded for a later judicial determination of the legal rights * * *." The rule of *Phillips* has been recently cited with approval in *Fuentes* v. *Shevin*, 407 U.S. 67, 91–92, n. 24. Cf. *Mitchell* v. *W.T. Grant Co.*, 416 U.S. 600.[38] Thus, the general principle we urge in these cases, that the Commissioner is not required to issue a notice of deficiency in connection with the Section 6851 termination of a taxable year, does not pose any constitutional problems.

[38] *Phillips* is representative of a long line of decisions upholding the right of the federal government to collect its internal revenue by means of summary administrative procedures. See, *e.g.*, *Cheatham* v. *United States*, 92 U.S. 85, 88–89, and *Springer* v. *United States*, 102 U.S. 586, 593–594. In fact, the Court's original consideration of the due process clause of the Fifth Amendment sustained the summary collection of obligations to the government, making specific reference to the summary collection of taxes. *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272.

CONCLUSION

For the reasons stated, the judgment of the Sixth Circuit in No. 74–75 should be reversed and the case remanded to the district court with directions to dismiss the complaint; the judgment of the Second Circuit in No. 73–1808 should be affirmed.

Respectfully submitted.

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APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6201. ASSESSMENT AUTHORITY.

(a) *Authority of Secretary or Delegate.*—The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.*—The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) *Unpaid taxes payable by stamp.*—

(A) *Omitted stamps.*—Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or

his delegate determines to be liable for such tax.

(B) *Check or money order not duly paid.*—In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) *Erroneous income tax prepayment credits.*—If on any return or claims for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) [as amended by Sec. 2(b), Act of August 7, 1969, P.L. 91–53, 83 Stat. 91] *Amount Not To Be Assessed.*—

(1) *Estimated income tax.*—No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

* * * * *

(d) [as amended by Sec. 101(j)(38), Tax Reform Act of 1969, P.L. 91–172, 83 Stat. 487] *Deficiency Proceedings.*—

For special rules applicable to deficiencies of income, estate, gift, and chapter 42 taxes, see subchapter B.

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) [as amended by Sec. 101(f)(1), Tax Reform Act of 1969, *supra*] *In General.*—For purposes of this title in the case of income, estate, gift, and excise taxes, imposed by subtitles A and B, and chapter 42, the term "deficiency" means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

* * * * * * *

SEC. 6212. NOTICE OF DEFICIENCY.

(a) [as amended by Sec. 89(b), Technical Amendments Act of 1958, P.L. 85–866, 72 Stat. 1606, and Sec. 101(j)(40), Tax Reform Act of 1969, *supra*] *In General.*—If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 42, he is authorized to send notice of such deficiency to the tax payer by certified mail or registered mail.

* * * * *

(c) *Further Deficiency Letters Restricted.*—

(1) [as amended by Sec. 101(f)(2), Tax Reform Act of 1969, *supra*, and Sec. 102(d)(5), Excise, Estate and Gift Tax Adjustment Act of 1970, P.L. 91–614, 84 Stat. 1836] *General rule.*—

If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar quarter, of estate tax in respect of the taxable estate of the same decedent, of section 4940 tax for the same taxable year, or of chapter 42 tax (other than under section 4940) with respect to any act (or failure to act) to which such petition relates except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assessments).

* * * * *

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) [as amended by Sec. 101(j)(42), Tax Reform Act of 1969, *supra*] *Time for Filing Petition and Restriction on Assessment.*—Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy

or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be law-

ful without regard to the 10-day period provided in this section.

(b) [as amended by Sec. 104(a), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] *Seizure and Sale of Property.*—The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

* * * * *

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) [as amended by Sec. 104(b)(1), Federal Tax Lien Act of 1966, *supra*] *Requirement.*—Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

* * * * *

SEC. 6335. SALE OF SEIZED PROPERTY.

(a) *Notice of Seizure.*—As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling

or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) [as amended by Sec. 104(d), Federal Tax Lien Act of 1966, *supra*] *Notice of Sale.*—The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331(a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

* * * * *

SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) [as amended by Sec. 82(a), Technical Amendments Act of 1958, *supra*] *Period of Limitation of Filing Claim.*—Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax

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was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

* * * * *

SEC. 6532. PERIODS OF LIMITATION ON SUITS.

(a) *Suits by taxpayers for Refund.*—

(1) [as amended by Sec. 89(b), Technical Amendments Act of 1966, *supra*] *General rule.*—No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

* * * * *

SEC. 6851. TERMINATION OF TAXABLE YEAR.

(a) *Income Tax in Jeopardy.*—

(1) *In general.*—If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year

unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

* * * * *

(b) *Reopening of Taxable Period.*—Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable

period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonesident alien the taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

* * * * *

SEC. 6861. JEOPARDY ASSESSMENTS OF INCOME, ESTATE, AND GIFT TAXES.

(a) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a) immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Deficiency Letters.*—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

* * * * *

(g) *Abatement if Jeopardy Does Not Exist.*—The Secretary or his delegate may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

* * * * *

SEC. 6863. STAY OF COLLECTION OF JEOPARDY ASSESSMENTS.

(a) *Bond to Stay Collection.*—When a jeopardy assessment has been made under section 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary or his delegate, within such time as may be fixed by regulations prescribed by the Secretary or his delegate, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) *Further Conditions in Case of Income, Estate, or Gift Taxes.*—In the case of taxes subject to the jurisdiction of the Tax Court—

(1) *Prior to petition to tax court.*—If the bond is given before the taxpayer has filed his petition under section 6213(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) *Effect of tax court decision.*—The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) *Stay of sale of seized property pending tax court decision.*

(A) *General rule.*—Where, notwithstanding the provisions of section 6213(a), a jeopardy assessment has been made under section 6861 the property seized for the collection of the tax shall not be sold—

(i) if section 6861(b) is applicable prior to the issuance of the notice of deficiency and the expiration of the time provided in section 6213(a) for filing petition with the Tax Court, and

(ii) if petition is filed with the Tax Court (whether before or after the making of such jeopardy assessment under

section 6861), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if section 6861(a) were not applicable.

(B) *Exceptions.*—Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary or his delegate determines that the expenses or conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) *Applicability.*—Subparagraphs (A) and (B) shall be applicable only with respect to a jeopardy assessment made on or after January 1, 1955, and shall apply with respect to taxes imposed by this title and with respect to taxes imposed by the Internal Revenue Code of 1939.

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) [as amended by Sec. 110(e), Federal Tax Lien Act of 1966, *supra*] *Tax.*—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

SEC. 7422. CIVIL ACTIONS FOR REFUND.

(a) *No Suit Prior to Filing Claim for Refund.*—No suit or proceedings shall be maintained in any court for the recovery of any internal revenue tax

alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

* * * * *

APPENDIX B

REVENUE ACT OF 1921

PART IV.—ADMINISTRATIVE PROVISIONS.

PAYMENT OF TAXES.

SEC. 250. (a) That except as otherwise provided in this section and sections 221 and 237 the tax shall be paid in four installments, each consisting of one-fourth of the total amount of the tax. The first installment shall be paid at the time fixed by law for filing the return, and the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after the time fixed by law for filing the return. Where an extension of time for filing a return is granted the time for payment of the first installment shall be postponed until the date of the expiration of the period of the extension, but the time for payment of the other installments shall not be postponed unless the Commissioner so provides in granting the extension. In any case in which the time for the payment of any installment is at the request of the taxpayer thus postponed, there shall be added as a part of such installment interest thereon at the rate of one-half of 1 per centum per month from the time it would have been due if no extension had been granted, until paid. If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the collector.

The tax may at the option of the taxpayer be paid in a single payment instead of installments, in which case the total amount shall be paid on or before the time fixed by law for filing the return, or, where an extension of time for filing the return has been granted, on or before the expiration of the period of such extension.

(b) As soon as practicable after the return is filed the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

If the amount already paid is less than that which should have been paid, the difference, to the extent not covered by any credits due to the taxpayer under section 252 (hereinafter called "deficiency"), together with interest thereon at the rate of one-half of 1 per centum per month from the time the tax was due (or, if paid on the installment basis, on the deficiency of each installment from the time the installment was due), shall be paid upon notice and demand by the collector. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency in the tax, and interest in such a case shall be collected at the rate of 1 per centum per month on the amount of such deficiency in the tax from the time it

was due (or, if paid on the installment basis, on the amount of the deficiency in each installment from the time the installment was due), which penalty and interest shall become due and payable upon notice and demand by the collector. If any part of the deficiency is due to fraud with intent to evade tax, then, in lieu of the penalty provided by section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made, but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the total amount of the deficiency in the tax. In such case the whole amount of the tax unpaid, including the penalty so added, shall become due and payable upon notice and demand by the collector.

(c) If the return is made pursuant to section 3176 of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector.

(d) The amount of income, excess-profits, or war-profits taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return was filed, and the amount of any such taxes due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, or under section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, shall be determined and assessed within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; and no suit or proceeding for the collection of any such taxes due under

this Act or under prior income, excess-profits, or war-profits tax Acts, or of any taxes due under section 38 of such Act of August 5, 1909, shall be begun, after the expiration of five years after the date when such return was filed, but this shall not affect suits or proceedings begun at the time of the passage of this Act: *Provided,* That in the case of income received during the lifetime of a decedent, all taxes due thereon shall be determined and assessed by the Commissioner within one year after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent: *Provided further,* That in the case of a false or fraudulent return with intent to evade tax, or of a failure to file a required return, the amount of tax due may be determined, assessed, and collected, and a suit or proceeding for the collection of such amount may be begun, at any time after it becomes due: *Provided further,* That in cases coming within the scope of paragraph (9) of subdivision (a) of section 214, or of paragraph (8) of subdivision (a) of section 234, or in cases of final settlement of losses and other deductions tentatively allowed by the Commissioner pending a determination of the exact amount deductible, the amount of tax or deficiency in tax due may be determined, assessed, and collected at any time; but prior to the assessment thereof the taxpayer shall be notified and given a period of not less than thirty days in which to file an appeal and be heard as hereinafter provided in this subdivision.

If upon examination of a return made under the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or this Act, a tax or a deficiency in tax is discovered, the taxpayer shall be notified thereof and given a period of not less than thirty days after such notice is sent by registered mail in

which to file an appeal and show cause or reason why the tax or deficiency should not be paid. Opportunity for hearing shall be granted and a final decision thereon shall be made as quickly as practicable. Any tax or deficiency in tax then determined to be due shall be assessed and paid, together with the penalty and interest, if any, applicable thereto, within ten days after notice and demand by the collector as hereinafter provided, and in such cases no claim in abatement of the amount so assessed shall be entertained: *Provided,* That in cases where the Commissioner believes that the collection of the amount due will be jeopardized by such delay he may make the assessment without giving such notice or awaiting the conclusion of such hearing.

(c) If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: *Provided,* That as to any such amount which is the subject of a bona fide claim for abatement filed within ten days after notice and demand by the collector, where the taxpayer has not had the benefit of the provisions of subdivision (d), such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of one-half of 1 per centum per month on that part of the claim rejected.

In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's compu-

tation of the tax on the return shall be sufficient notice of the amount due. In the case of each subsequent installment the collector may, within thirty days and not later than ten days before the installment becomes due, mail to the taxpayer notice of the amount of the installment and the date on which it is due for payment. Such notice of the collector shall be sufficient notice and sufficient demand under this section.

(f) In the case of any deficiency (except where the deficiency is due to negligence or to fraud with intent to evade tax) where it is shown to the satisfaction of the Commissioner that the payment of such deficiency would result in undue hardship to the taxpayer, the Commissioner may, with the approval of the Secretary, extend the time for the payment of such deficiency or any part thereof for such period not in excess of eighteen months from the passage of this Act as the Commissioner may determine. In such case the Commissioner may require the taxpayer to furnish a bond with sufficient sureties conditioned upon the payment of the deficiency in accordance with the terms of the extension granted. There shall be added in lieu of other interest provided by law, as a part of such deficiency, interest thereon at the rate of two-thirds of 1 per centum per month from the time such extension is granted; except where such other interest provided by law is in excess of interest at the rate of two-thirds of 1 per centum per month. If the deficiency or any part thereof is not paid in accordance with the terms of the extension granted, there shall be added as part of the deficiency, in lieu of other interest and penalties provided by law, the sum of 5 per centum of the deficiency and interest on the deficiency at the rate of 1 per centum per month from the time it becomes payable in accordance with the terms of such extension.

(g) If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design. A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of

this subdivision, provided the taxpayer has paid in full and all other income, war-profits, or excess-profits taxes due from him under any Act of Congress. If security is approved and accepted pursuant to the provisions of this subdivision and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this subdivision prior to the expiration of the time otherwise allowed for paying such respective taxes. In the case of a citizen of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this subdivision. No alien shall depart from the United States unless he first secures from the collector or agent in charge a certificate that he has complied with all the obligations imposed upon him by the income, war-profits, and excess-profits tax laws. If a taxpayer violates or attempts to violate this subdivision there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 1 per centum per month from the time the tax became due.

(h) The provisions of subdivisions (e), (f) and (g) of this section shall apply to the assessment and collection of taxes which have accrued or may accrue under the Revenue Act of 1917, the Revenue Act of 1918 or this Act.

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